IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA,	
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Plaintiff,) Case No. 2:96-CR-52 B
vs.)
) ORDER
GRAVITY SPORTS, et al.,)
Defendants.)

Defendants filed a Motion to Dismiss alleging that 36 C.F.R. § 2.17(a)(3), the statute under which they are charged, is a regulation invalid on its face because it directly conflicts with the federal statute that regulates the use of air navigation facilities in the United States. That statute is 49 U.S.C. § 40103(a) which, in pertinent part, provides that citizens of the United States have "a public right of transit through the navigable airspace" of this country. The government, on the other hand, argues that 36 C.F.R. § 2.17 is a valid and appropriate exercise of the National Park Service's authority to control and regulate the use of lands and waters within the National Park Service. In their documents, the government has also attached responses to an order issued in the case of *United States of America v. William Oxx, et al.*, by United States Senior District Judge Bruce S. Jenkins to the Federal Aviation Administration and the National Park Service. The nine questions with their appropriate responses have been reviewed by this court, as well as all other memoranda submitted by the parties.

This court specifically finds that 36 C.F.R. § 2.1783 has not been preempted. The National Park Service has by statute been charged with the duty to "promote and regulate the use" of the federal national parks, monuments, and recreation areas." 16 U.S.C. § 1. The secretary of the

interior is also charged with the responsibility of making and publishing "such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reservations" under the National Park Service jurisdiction. 16 U.S.C. § 3. The Secretary of the Interior has a great deal of discretion in promulgating and in enforcing regulations for use of the national parks. As this court as previously stated in the case of *United States v. Layne*, 847 F. Supp. 888, 889 (D. Utah 1994) "16 U.S.C. § 1 creates the National Park Service within the Department of the Interior and authorizes the Secretary of the Interior to make regulations for the use of national parks."

For the foregoing reasons, the court specifically finds that the defendants' Motion to Dismiss should be **DENIED**.

The matter is hereby set for a status conference to set further proceedings on this matter on March 22, 1999, at 10:30 a.m.

SO ORDERED this ______ day of March, 1999.

BY THE COURT:

SAMUEL ALBA

United States Magistrate Judge

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United States District Court for the District of Utah March 8, 1999

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:96-cr-00052

True and correct copies of the attached were mailed by the clerk to the following:

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